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10/765,822	01/27/2004	Paul E. Krajewski	GP-303999	9090

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MILLER IP GROUP, PLC
GENERAL MOTORS CORPORATION
42690 WOODWARD AVENUE
SUITE 200
BLOOMFIELD HILLS, MI 48304

EXAMINER

MAPLES, JOHN S

ART UNIT	PAPER NUMBER
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL E. KRAJEWSKI
and RAJA K. MISHRA

Appeal 2009-012243
Application 10/765,822
Technology Center 1700

Before MICHAEL P. COLAIANNI, ADRIENE LEPIANE HANLON, and
MARK NAGUMO, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

ORDER DISMISSING APPEAL

Appellants appeal under 35 U.S.C. § 134 the final rejection of claims 1-18. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

We DISMISS THE APPEAL AS BEING PREMATURE.

Appellants petitioned the Examiner's restriction requirement mailed April 19, 2006, which restricted claims 22-24 from claims 1-18, as being improper (Petition dated May 4, 2006). In a petition decision mailed August 15, 2006, the TC Director granted this petition and stated that "[t]he

application is being forwarded to the examiner to rejoin the non-elected claims and preparing [sic] a new non-final office action addressing all pending claims.” (Petition Dec. 2). The Advisory Action mailed on December 18, 2006, indicated that Appellants’ amendment to claim 22 would be entered and the application would proceed to normal processing of the Notice of Appeal and filing of the Appeal Brief. (Advisory Action 1). However, it is apparent from the record that the Examiner neither treated the rejoined non-elected claims 22-24 on the merits, nor issued a new non-final office action as directed by the petition decision. Rather, Appellants note that claims 22-24 have not been considered by the Examiner (App. Br. 2) and the Examiner maintains that claims 22-24 are not on appeal (Ans. 3).

Accordingly, because the Examiner must comply with the petition decision by the TC Director and perform the tasks required thereby, the appeal to the Board prior to completion of these tasks is premature. Therefore, we dismiss the appeal and direct the Examiner’s attention to the requirements imposed by the TC Director’s petition decision dated August 15, 2006.

ORDER
DISMISSED

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